

1 C. Brandon Wisoff (State Bar No. 121930)  
 bwisoff@fbm.com  
 2 Thomas B. Mayhew (State Bar No. 183539)  
 tmayhew@fbm.com  
 3 Alexander M. Porcaro (State Bar No. 281185)  
 aporcaro@fbm.com  
 4 FARELLA BRAUN + MARTEL LLP  
 235 Montgomery Street, 17th Floor  
 5 San Francisco, CA 94104  
 Telephone: (415) 954-4400  
 6 Facsimile: (415) 954-4480

7 Attorneys for Defendant  
 ELECTROLUX HOME PRODUCTS, INC.

8  
 9 UNITED STATES DISTRICT COURT  
 10 EASTERN DISTRICT OF CALIFORNIA  
 11

12 ROBERT BOVERO,

13 Plaintiff,

14 v.

15 ELECTROLUX HOME PRODUCTS  
 16 INCORPORATED,

17 Defendant.

Case No. 2:13-cv-00087-WBS-AC

**JOINT STIPULATION AND ~~[PROPOSED]~~  
 ORDER TRANSFERRING ACTION TO  
 THE DISTRICT OF NEW JERSEY  
 PURSUANT TO THE FIRST-TO-FILE  
 RULE AND 28 U.S.C. § 1404(a)**

18 Plaintiff Robert Bovero (“Plaintiff”) and Defendant Electrolux Home Products, Inc.  
 19 (“Defendant”) (collectively “Parties”), by and through counsel, hereby stipulate that the Court  
 20 may, and request that it do, (1) transfer this putative class action to the District of New Jersey for  
 21 coordinated or consolidated proceedings with two related putative class actions pending there,  
 22 and (2) extend the time for Defendant’s response until after Plaintiff files an anticipated Second  
 23 Amended Complaint that takes into account the District of New Jersey’s ruling on motions to  
 24 dismiss in the two related actions.

25 As support and background for this Stipulation, the Parties agree as follows:

26 1. On June 1, 2012, Mariusz Kuzian v. Electrolux Home Products, Inc., Case No. 1:12-cv-  
 27 03341-NLH-AMD, (the “Kuzian Action”) was filed in the United States District Court for the  
 28 District of New Jersey, and an amended complaint was filed on June 14, 2012. The Kuzian

1 Action, asserting claims under New Jersey law, prays for certification of a nationwide class of  
2 purchasers of certain of Defendant's refrigerator products alleging defects in the ice makers  
3 contained in those products.

4 2. On May 14, 2012, Christopher Lopiccolo v. Electrolux Home Products, Inc., Case No.  
5 2:12-cv-02397-ADS-ARL, (the "Lopiccolo Action") was filed in the United States District Court  
6 for the Eastern District of New York. The Lopiccolo Action, alleging claims under New York  
7 law, prays for certification of a nationwide class of purchasers of certain of Defendant's  
8 refrigerator products alleging defects in the ice makers contained in those products.

9 3. On June 27, 2012, the Lopiccolo Action was transferred from the Eastern District of New  
10 York to the District of New Jersey pursuant to a Joint Stipulation and Consent Order dated June  
11 22, 2012.

12 4. On July 11, 2012, the Honorable Noel L. Hillman of the District of New Jersey entered an  
13 order consolidating the Kuzian and Lopiccolo Actions for the purposes of discovery and case  
14 management and ordering that the consolidated action proceed under the case number for the  
15 Kuzian Action, Case No. 1:12-cv-03341-NLH-AMD.

16 5. On September 25, 2012, the plaintiffs in the Lopiccolo Action filed an amended complaint  
17 to add the claims of a new putative class representative, Irma Lederer, and then dismissed the  
18 claims of the prior putative class representative, Christopher LoPiccolo. This amended action  
19 (the "Lederer Action"), alleging claims under New York law, prays for certification of a New  
20 York class of purchasers of certain of Defendant's refrigerator products alleging defects in the ice  
21 makers contained in those products.

22 6. On January 14, 2013, Robert Bovero v. Electrolux Home Products, Inc., Case No. 2:13-  
23 cv-00087-WBS-AC, (the "Bovero Action" or "this action") was filed in this Court, and a First  
24 Amended Complaint was filed on February 28, 2013. This action, alleging claims under  
25 California law, prays for certification of a California class of purchasers of certain of Defendant's  
26 refrigerator products alleging defects in the ice makers contained in those products.

1       7. On February 26, 2013, pursuant to the Parties' joint stipulation, this Court entered an  
2 order extending the time for Defendant to respond to the First Amended Complaint to March 29,  
3 2013.

4       8. On March 28, 2013, Judge Hillman entered rulings denying Defendant's motion to  
5 dismiss the Kuzian Action and granting in part and denying in part Defendant's motion to dismiss  
6 the Lederer Action.

7       9. The Parties agree that the Kuzian and Lederer Actions were filed before the Bovero  
8 Action, and that the various actions are expected to involve overlapping or substantially similar  
9 factual and legal issues.

10       10. The parties further agree that the Bovero Action might have been brought in the District  
11 of New Jersey and that transferring this action to that court would promote the convenience of the  
12 parties, the convenience of the witnesses, and the interests of justice.

13       11. Defendant's primary place of business, where many of its witnesses and documents  
14 would be located, is in Charlotte, North Carolina, which is closer to the District of New Jersey  
15 than to this Court.

16       12. According to official Federal Court Management statistics for September 2012, found at  
17 [http://www.uscourts.gov/Statistics/FederalCourtManagementStatistics/district-courts-september-](http://www.uscourts.gov/Statistics/FederalCourtManagementStatistics/district-courts-september-2012.aspx)  
18 [2012.aspx](http://www.uscourts.gov/Statistics/FederalCourtManagementStatistics/district-courts-september-2012.aspx), the average judge in the District of New Jersey had an active caseload of 466 pending  
19 cases, compared to 1,427 pending cases per judge in this District.

20       13. Plaintiff herein intends to file a Second Amended Complaint whether or not this action is  
21 transferred.

22       14. Plaintiff agrees that Defendant need not respond to the First Amended Complaint until  
23 after Plaintiff files his Second Amended Complaint;

24 ///

25 ///

26 ///

27 ///

28 ///

1 ACCORDINGLY, THE PARTIES HEREBY AGREE AND STIPULATE THAT:

- 2 1. Pursuant to the first-to-file rule and 28 U.S.C. § 1404(a), the Parties jointly request  
3 transfer of this action to the District of New Jersey for coordinated or consolidated  
4 proceedings with the Kuzian and Lederer Actions pending there; and  
5 2. Defendant need not respond to Plaintiff's First Amended Complaint until after  
6 Plaintiff files his Second Amended Complaint

7 .  
8  
9 IT IS SO STIPULATED.  
10

11 Dated: March 29, 2013

FARELLA BRAUN + MARTEL LLP

12 By: /s/ C. Brandon Wisoff  
13 C. Brandon Wisoff

14 Attorneys for Defendant  
15 ELECTROLUX HOME PRODUCTS INC.

16 Dated: March 29, 2013

EPPSTEINER & FIORICA ATTORNEYS, LLP

17 By: /s/ Stuart M. Eppsteiner  
18 Stuart M. Eppsteiner  
19 (as authorized on March 29, 2013)

20 Attorneys for Plaintiff ROBERT BOVERO, on  
21 behalf of himself and those similarly situated  
22  
23  
24  
25  
26  
27  
28

**ORDER**

Based on the foregoing stipulation and for good cause shown,

IT IS HEREBY ORDERED that:


1. Defendant need not respond to the First Amended Complaint in light of Plaintiff's intention to file a Second Amended Complaint;

2. The court finds that under the first-to-file rule and 28 U.S.C. 1404(a), it would be in the interests of the parties, witnesses, and justice to transfer the action to the United States District Court for the District of New Jersey so that the parties may seek coordination/consolidation with the related cases Mariusz Kuzian v. Electrolux Home Products, Inc., Case No. 1:12-cv-03341-NLH-AMD, and Irma Lederer v. Electrolux Home Products, Inc., Case No.: 1:12-cv-03930 (NLH-AMD); and

3. This action is hereby transferred to the United States District Court for the District of New Jersey.

IT IS SO ORDERED.

Dated: March 29, 2013

  
WILLIAM B. SHUBB  
UNITED STATES DISTRICT JUDGE